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Attorneys for Defendant and Counterclaim-Plaintiff  
THE SHERWIN-WILLIAMS COMPANY

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CHIP-MENDER, INC.,  
a California corporation,

Plaintiff,

v.

THE SHERWIN-WILLIAMS COMPANY,  
an Ohio corporation,

Defendant.

CASE NO. 05-CV-3465 (PJH)

**STIPULATED DISMISSAL OF CLAIMS  
AND COUNTERCLAIMS RELATING TO  
U.S. PATENT NO. 6,283,663 AND ORDER  
THEREON**

AND RELATED COUNTERCLAIMS

STIPULATED DISMISSAL OF CLAIMS AND  
COUNTERCLAIMS RELATING TO U.S. PATENT  
NO. 6,283,663 AND ORDER THEREON

CASE NO. 05-CV-3465 (PJH)

1 WHEREAS plaintiff Chip-Mender, Inc. ("Chip-Mender") wishes to dismiss with  
2 prejudice its Second Cause of Action for infringement of U.S. Patent No. 6,283,663 ("the '663  
3 Patent"); and

4 WHEREAS Chip-Mender hereby covenants that it will not sue Sherwin-Williams or its  
5 customers (including customers of retailers and third-party resellers), its retailers, or its third-  
6 party resellers for infringement of the '663 Patent, or any reissues or re-examinations thereof,  
7 with respect to products that Sherwin-Williams has made, used, or sold as of the date of the  
8 stipulation.

9 IT IS HEREBY STIPULATED by and between Chip-Mender and Sherwin-Williams, by  
10 and through their respective counsel, as follows:

11 1. Pursuant to Federal Rule of Civil Procedure 41(a), Chip-Mender's Second Cause of  
12 Action for infringement of the '663 Patent shall hereby be dismissed with prejudice.

13 2. Pursuant to Federal Rule of Civil Procedure 41(c), Sherwin-Williams' Second  
14 Counterclaim for Declaratory Relief relating to the '663 Patent shall hereby be dismissed without  
15 prejudice.

16 3. Pursuant to Federal Rule of Civil Procedure 41(c), Sherwin-Williams's Third and  
17 Fourth Counterclaims for violation of the Sherman Antitrust Act shall hereby be dismissed  
18 without prejudice, but only to the extent that the allegations of those counterclaims relate to the  
19 '663 Patent.

20 4. Pursuant to Federal Rule of Civil Procedure 15(a), Chip-Mender shall hereby be  
21 granted leave file an amended complaint in the form attached to this Stipulated Dismissal as  
22 Exhibit 1. Sherwin-Williams covenants and agrees that it will not assert a counterclaim for  
23 declaratory relief relating to the '663 Patent or counterclaims for violation of the Sherman  
24 Antitrust Act that contain allegations relating to the '663 Patent in its response to this pleading.

**CHIP-MENDER, INC.**

Attorneys for Plaintiff and Counterclaim-Defendant  
CHIP-MENDER, INC.

**THE SHERWIN-WILLIAMS COMPANY**

Attorneys for Defendant and Counterclaim-Plaintiff  
THE SHERWIN-WILLIAMS COMPANY



The Honorable Phyllis J. Hamilton  
United States District Court Judge

**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Kenneth B. Wilson, attest that I obtained the concurrence of Regan J. Fay in filing this document.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of November, 2006 at San Francisco California.

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/s/  
Kenneth B. Wilson